tion of a contract which does not materialize, there may be quasi-contractual liability on the defendant's part to pay quantum meruit: see *William Lacey (Hounslow) Ltd* v *Davis*[4] and *Brewer Street Investments Ltd* v *Barclays Woollen Co Ltd.*[5] In view of the course the trial had taken, with the respondents electing not to call any evidence, it was certainly not open to me to make any ruling or comment on that question without hearing the other side of the story. This, in essence, was the reason why the amendment sought by the appellants had to be disallowed.

Appeal dismissed.

Solicitors: *Michael Khoo & BB Ong; Lee & Lee.*

Reported by *Kevin Mathews*

Ong Kee Ming (t/a FL Development and Property Consultants) v Quek Yong Kang & Anor

HIGH COURT (SINGAPORE) — DC SUIT NO 4386 OF 1990
CHAN SEK KEONG J
20 FEBRUARY 1991

Contract — Agency for sale of defendants' property — Commission due — Whether plaintiff was effective cause of sale

Agency — Sale of property — Commission due — Whether plaintiff entitled to be paid commission — Whether plaintiff was effective cause of sale

This is a claim by the plaintiff against the defendants for commission in connection with the sale of the defendants' property. Sometime in March or April 1990 the defendants, who were residents in Canada, authorized a relative, TKE, to place an advertisement for the sale of their property in *The Straits Times*. The advertisement came to the attention of the plaintiff who contacted TKE and offered to find a purchaser. TKE indicated to the plaintiff that if he could secure a purchaser for the property, a 1% commission would be paid on the purchase price upon completion of the sale. TKE's offer was later confirmed by the first defendant. The plaintiff placed two advertisements in *The Straits Times*, to the second of which a Mr & Mrs CCO ('the CCOs') responded. He took the CCOs to inspect the property and they made an offer of $1.4m. The first defendant, Q, then in Singapore, instructed the plaintiff to negotiate for an additional $20,000. He did so successfully as the CCOs agreed to buy the property at $1.42m. An option to purchase dated 18 April 1990 was given to the CCOs upon payment of $15,000. The option was open to acceptance by 10 May 1990. Completion was fixed for three months from the date of acceptance. Clause 9 of the option provided that 'I confirm that a commission of one percent (1%) of the sale price is payable to [the plaintiff] on completion of the sale'. About a week later, the plaintiff was informed by Mr CCO that the property was affected by a category 3 road line. He wanted a reduction in the price. The plaintiff tried to persuade Q to reduce the price but Q refused. On 4 May 1990, the defendants returned the option fee of $15,000 on the ground of the unsatisfactory requisition at the request of the plaintiff's solicitors. The option accordingly ceased to have effect. On 8 May 1990, Q appointed another firm of real estate agents, PRE, to be the sole agent for the sale of the property. PRE advertised the property in *The Straits Times* on 10, 11, 14, 17, and 21 May 1990. On 19 May 1990, Mr CCO telephoned Q in Canada and offered to buy the property at the reduced price of $1.3m. The parties agreed to the price of $1.38m on 23 May 1990. An agreement for sale dated 31 May 1990 was signed by them and the sale was completed on 8 August 1990.

Held, allowing the appeal:

In the absence of any special contractual terms, the general principle is that the agent must be the effective cause of the sale. On the evidence before the court, there is no doubt whatever that, in terms of cause and effect, the plaintiff was the effective cause of the ultimate sale. He was the sole effective cause as there is no evidence the CCOs came back after reading PRE's advertisements. There was no break in the chain of causation on the basis of cause and effect.

Cases referred to

1 *Wilkinson* v *Alston* (1879) 48 LJQB 733 (folld)
2 *Green* v *Bartlett* (1863) 14 CBNS 681; 32 LJCP 261 (folld)
3 *Glentree Estates Ltd* v *Gee* (1981) 259 EG 332 (folld)

April J Loh for the plaintiff/appellant.
SJ Pillay for the defendants/respondents.

Cur Adv Vult

Chan Sek Keong J: This is a claim by the plaintiff against the defendants for commission in connection with the sale of the defendants' property.

The facts are not disputed. Sometime in March or April 1990, the defendants, who were residents in Canada, authorized a relative, TKE, to place an advertisement for the sale of their property in *The Straits Times*. The advertisement came to the attention of the plaintiff who contacted TKE and offered to find a purchaser. TKE indicated to the plaintiff that if he could secure a purchaser for the property, a 1% commission would be paid on the purchase price upon completion of the sale. TKE's offer was later confirmed by the first defendant.

The plaintiff contacted a few of his clients who expressed no interest in the property. He then placed two advertisements in *The Straits Times*, to the second of which a Mr & Mrs CCO ('the CCOs') responded. He took the CCOs to inspect the property and they made an offer of $1.4m. As the first defendant, Q, was then in Singapore, the plaintiff discussed the offer with Q who wanted to and did meet the CCOs. Q instructed the plaintiff to negotiate for an additional $20,000. He did so successfully as the CCOs agreed to buy the property at $1.42m.

An option to purchase dated 18 April 1990 ('the option'), prepared by the solicitors for the defendants,

was given to the CCOs upon payment of $15,000. The option contained an offer to sell at the agreed price and was open to acceptance by 10 May 1990. Completion was fixed for three months from the date of acceptance. Clause 9 of the option provided as follows:

> I confirm that a commission of one percent (1%) of the sale price is payable to [the plaintiff] on completion of the sale.

About a week later, the plaintiff was informed by Mr CCO that the property was affected by a category 3 road line. He wanted a reduction in the price. The plaintiff contacted and tried to persuade Q to reduce the price but Q refused. At this point, the solicitors for the parties came into the picture. Later, in June 1990, the plaintiff was informed that the CCOs had decided to purchase the property at $1.38m.

What happened between April to June 1990 is set out in an affidavit of the solicitor for the defendants filed in these proceedings. On 4 May 1990, the solicitors for the plaintiff wrote to the defendants' solicitors for the return of the option fee of $15,000 on the ground of the unsatisfactory requisition. The defendants complied with the request on the advice of their solicitors. The option accordingly ceased to have effect.

On 8 May 1990, Q appointed another firm of real estate agents, PRE, to be the sole agent for the sale of the property. PRE advertised the property in *The Straits Times* on 10, 11, 14, 17 and 21 May 1990.

On 14 May 1990, the plaintiff informed Q that he had found another buyer. Q refused to deal with him as he had appointed PRE as his sole agent.

On 19 May 1990, Mr CCO telephoned Q in Canada and offered to buy the property at the reduced price of $1.3m. The parties agreed on the price of $1.38m on 23 May 1990. An agreement for sale dated 31 May 1990 was signed by them and the sale was completed on 8 August 1990.

The plaintiff's claim for commission of 1% of the sale price of $1.38m is based on the principle that he was the effective cause of the sale to the CCOs. The defendants deny liability.

The deputy registrar gave unconditional leave to defend. He found that there were a number of triable issues which he did not identify. Counsel for the defendants had raised the following issues: (1) what was meant by a completed sale upon which the commission was payable; (2) whether the plaintiff was entitled to the commission after the first aborted sale; (3) whether the plaintiff was in breach of his duty in acting against the interest of the defendants [in trying to persuade the defendants to accept the CCOs' reduced offer, and later, to return the option fee to the CCOs]; (4) whether the appointment of the plaintiff as an agent was terminated; (5) whether the plaintiff was entitled to the commission after the appointment of the new sole agent. The deputy registrar also found specifically that whether the plaintiff was the effective cause of the sale could only be determined at the trial of the action.

The plaintiff has now appealed. As the claim is one in contract, it is necessary to look at the terms of the contract. The terms are simple. The defendants agreed to pay a 1% commission to the plaintiff if he could find a purchaser for the property, the commission to be paid upon completion. The defendants do not deny the purchase, but they deny liability on the grounds I have set out above.

The law is not in dispute. In the absence of any special contractual terms, the general principle is that the agent must be the effective cause of the sale. It is a question of fact in each case. The role of the plaintiff was to find a buyer for the property. In *Wilkinson* v *Alston*,[1] Bramwell LJ said at p 734:

> As I apprehend, the facts are these: The defendant practically said to the plaintiff, 'If you or White can find me a purchaser, and the purchase is completed, I will pay you a commission.' And the expression 'if you find me a purchaser' may be expanded as meaning, if you can introduce a purchaser to my self, or can introduce a purchaser to the premises or call the premises to the notice of the purchaser.

In *Wilkinson* v *Alston*,[1] W, the agent, had in March 1876, mentioned the name of WI, a shipbroker, to A, the principal, of A's ship. WI had then no intention of buying and A was then not selling until the ship arrived home. Later, in June, WI contacted A directly and a sale of the ship was effected with WI's principal. The Court of Appeal held that the plaintiff was entitled to his commission as he did introduce the ultimate purchaser.

On the evidence before the court, there is no doubt whatever that, in terms of cause and effect, the plaintiff was the effective cause of the ultimate sale. He was the sole effective cause as there is no evidence the CCOs came back after reading PRE's advertisements. There was no break in the chain of causation on the basis of cause and effect.

Accordingly, the plaintiff must succeed on his claim unless his appointment was subject to special terms which were operative in denying his commission. Counsel for the defendants has argued that there were special terms. She contended that the commission became payable only on the completion of the sale pursuant to the option and this did not occur as the sale took place outside the terms of the option. In my view, there is nothing in the terms of appointment which stipulated that this was a condition for *entitlement* to payment of the commission as distinct from the *time* of payment.

The plaintiff was not a party to the option nor was it drafted by him. All that cl 9 meant was that the plaintiff would not be paid his commission until the purchase was completed. By itself, it cannot be construed to have the much larger effect that the completion of the sale must be through the lineal procession of events under the option and in no other manner. The plaintiff is not claiming the commission under the option but on the oral terms of his appointment.

The allegation that the plaintiff acted against the interest of the defendants, even if it were true, is also irrelevant, even if proved. The defendants have suffered no damage since they reduced the price on their own volition and not as a result of the persuasion of the plaintiff.

The termination, on 14 May 1990, of the plaintiff's appointment by the appointment of a sole agent was also, in my view, irrelevant. It was not a contractual term of the plaintiff's original appointment that the commission would not be payable after the cessation of his appointment. In any case, the cessation had nothing to do with whether the plaintiff was the effective cause of the completed sale. In *Green* v *Bartlett*,[2] G, an auctioneer and estate agent, was instructed by B to sell an island by auction or otherwise. G put the island up for auction but the reserved price was not reached. Afterwards, T, who had attended the auction, asked G for and was given B's name. T then approached B direct to negotiate the purchase of the island. Before the eventual sale, B terminated G's authority to sell. The court held that G was the *causa causans* of the sale and was entitled to the commission.

In *Glentree Estates Ltd* v *Gee*,[3] GEL was appointed the sole agent for the sale of G's house for two months. GEL found a buyer, F, whose offer was rejected by G as being too low. G then purported to withdraw the property from GEL and instructed another firm, HHE, to sell it. HHE advertised the property. This revived the interest of F who made an offer direct to G and eventually completed the sale. The court held that GEL was entitled to the commission as the effective cause of the sale was its original introduction and that the chain of causation was not broken by G's rejection of the original offer and the instruction of new agents. It should be noted that in this case, GEL did not rely on the premature termination of their sole agency as a cause of action and that the court did not regard it as a relevant factor for the purpose of determining the effective cause.

The only argument left to the defendants, and this their counsel has made, by implication, is that the plaintiff was not entitled to the commission as he was not the agent for the sale at the time the purchase was completed. In my view, this is no defence. The contact was to pay the commission if the plaintiff found a buyer. He did. In *Wilkinson* v *Alston*,[1] the argument of revocation of authority was also raised. The court rejected this argument. Bramwell LJ, after holding that there was no revocation, said at p 734:

> And more than that, if the letter were a revocation, it came too late, as there had been already an introduction of the ship to [B], so that the commission was already earned.

Cotton LJ said at p 736:

> Then it is said there was a revocation of the plaintiff's authority. But the principal cannot defeat the agent's right to commission when the agent who has been employed has already before the revocation done all that is necessary to earn it. If it were so, a dishonest principal could always defeat the claim of the agent. As soon as he knew that the agent was in communication with someone who was likely to become a purchaser he might put an end to his authority, though that had already been done which would lead to a sale.

Cotton LJ was not suggesting that a revocation made in good faith would have defeated the agent's right to commission. He was merely explaining why the courts would not regard the termination of the agency as a material factor in contracts of this type. Looking at the broad picture, the unsatisfactory requisition merely resulted in the completion of the sale at a lower price.

There is, in my view, no defence to this action. The appeal is allowed. There will be judgment for the plaintiff with costs, here and below.

Appeal allowed.

Solicitors: *Cheow Hin & Partners; Emmanuel & Barker.*

Reported by *Kevin Mathews*